

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
JOSEFF GENE GREEK,
Defendant.

Case No. 14-cr-00605-TEH

ORDER DENYING MOTION TO STAY

This matter comes before the Court on the Government's motion to stay consideration of Defendant Joseff Gene Greek's application for an order under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. The Government seeks a stay pending the Supreme Court's resolution of *Beckles v. United States*, for which a petition for a writ of certiorari was granted on June 27, 2016. *Beckles v. United States*, No. 15-8544, 2016 WL 1029080 (June 27, 2016).

A court has the discretion “to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.” *Leyva v. Certified Grocers of Cal.*, 593 F.2d 857, 863 (9th Cir. 1979). Greek does not dispute that *Beckles* is such a proceeding, but he correctly observes that, in determining whether to grant a stay, this Court must consider whether “there is even a fair possibility that the stay . . . will work damage to some one else.” *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). If there is, then a stay would be inappropriate unless the moving party “make[s] out a clear case of hardship or inequity in being required to go forward.” *Id.*

To determine whether such a possibility exists in this case, the Court ordered the parties to meet and confer regarding what the revised Sentencing Guidelines range would be if Greek were to prevail on his § 2255 motion. The parties filed a timely response to the Court’s order and agree that Greek’s revised Guidelines range would be 46-57 months, down from the 84-105 months under which he was sentenced. The Court sentenced Greek

1 to a below-Guidelines range of 72 months, and there is no guarantee that his sentence
2 would be modified even under a lower Guidelines range. On the other hand, it is also
3 possible that the Court would sentence Greek to a sentence below the revised Guidelines
4 range. Greek has already served approximately 20 months, and it is possible that, with
5 good time credits, a new sentence could result in his scheduled release around or before the
6 Supreme Court's decision in *Beckles*. The Court therefore finds a "fair possibility" of
7 prejudice. *Landis*, 299 U.S. at 255.

8 The Government has made no "clear case of hardship or inequity" if this Court were
9 to deny its motion for a stay. *Id.* Accordingly, the motion is DENIED.

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11 **IT IS SO ORDERED.**

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13 Dated: 08/10/16

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THELTON E. HENDERSON
United States District Judge

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